

AMENDMENTS TO THE DRAWINGS:

The attached sheets of drawings include changes to Figures 1 and 2. These sheets, which include Figures 1 and 2, replace the original sheets including Figures 1 and 2. In Figures 1 and 2, previously omitted element 100 has been added.

Attachment: Replacement Sheet
Annotated Sheet Showing Changes

REMARKS

The present Amendment is in response to the Examiner's Office Action mailed April 16, 2008. By this paper, claims 1, 2, 6, 9 and 11-26 are amended and no claims are added or cancelled. Claims 1-26 are now pending in view of the above amendments.

Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicants' remarks are presented in the order in which the corresponding issues were raised in the Office Action.

I. General Considerations

Applicants note that the remarks, or a lack of remarks, set forth herein are not intended to constitute, and should not be construed as, an acquiescence, on the part of the Applicants: as to the purported teachings or prior art status of the cited references; as to the characterization of the cited references advanced by the Examiner; or as to any other assertions, allegations or characterizations made by the Examiner at any time in this case. Applicants reserve the right to challenge the purported teaching and prior art status of the cited references at any appropriate time.

In addition, the remarks herein do not constitute, nor are they intended to be, an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed herein are presented solely by way of example. Consistent with the foregoing, the discussion herein is not intended, and should not be construed, to prejudice or foreclose contemporaneous or future consideration, by the Applicants, of additional or alternative distinctions between the claims of the present application and any references cited by the Examiner, and/or the merits of additional or alternative arguments.

II. Amended Drawings

The Applicants note that originally filed Figures 1 and 2 do not include reference numeral 100 as discussed on page 12, paragraph [0031] and page 13, paragraph [0035]. Applicants hereby submit new Figures 1 and 2 which include reference numeral 100. Also enclosed is a redlined copy of Figures 1 and 2 showing the changes being made. Applicants note that no new matter has been added.

III. Specification

As shown above, Applicants have amended paragraphs [0063] and [0067] of the specification to correct minor typographical errors. Applicants note that an amendment has been made to paragraph [0047] to update this paragraph. No new matter has been added by these amendments.

IV. Claim Numbering

In the Office Action, the Examiner has noted that claim 11 is missing in the original filed specification. According to rule 1.126, the numbers have been renumbered as claims 1-26. In response, Applicants have renumbered originally filed claims 12-27 as claims 11-26 as required by the Office Action.

V. Rejection Under 35 U.S.C. § 112, Second Paragraph

The Office Action rejects claims 6, 12, and 18 under 35 U.S.C. § 112, Second Paragraph for indefiniteness on the grounds that it is unclear what "substantially" means. In response, Applicants have amended claims 6, 12, 18, and 24 to remove the term "substantially". Applicants respectfully request that this rejection be withdrawn.

VI. Rejection Under 35 U.S.C. §101

The Office Action rejects claims 21-26 under 35 U.S.C. § 101 as being directed towards non-statutory subject matter. In particular, the Office Action notes that the claims may be directed toward non-physical media such as a wave.

In response, Applicants have amended independent claim 21 to recite among other limitations "physical storage computer readable medium carrying computer executable instructions for performing the method" (Emphasis added). Support for such amendments is found at least at pages 27-28 of the originally filed specification, particularly paragraph [0079].

Accordingly, claims 21-26 as amended now claim a physical storage computer readable medium carrying computer executable instructions such as RAM, ROM, CD-ROM, and other types of physical storage media. Accordingly, these claims are now clearly directed towards a physical computer component and therefore this rejection should be withdrawn.

VII. Rejection Under 35 U.S.C. §102(e)

The Office Action rejects claims 1-2, 4, 8-9, 11, 14-15, 17, 20-21, 23, and 26 under 35 U.S.C. § 102(e)¹ as being anticipated by *Blackwell et al.* (United States Patent No. 7,003,781). Applicants respectfully note at the outset that a claim is anticipated under 35 U.S.C. § 102(a), (b), or (e) only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Further, the identical invention must be shown in as complete detail as is contained in the claim. Finally, the elements must be arranged as required by the claim. *MPEP* § 2131. Applicants traverse the rejection of these claims for the reasons that will now be discussed.

As shown above, Applicants have amended independent claim 1 to recite as follows:

A method for processing data events captured in a multi-protocol communications system, the method comprising:

capturing first data events at a first link analyzer, the first link analyzer being disposed in an in-line arrangement with respect to a first data stream corresponding to a first communication protocol;

capturing second data events at a second link analyzer, the second link analyzer being disposed in an in-line arrangement with respect to a second data stream corresponding to a second communication protocol that is different from the first communication protocol;

accessing the captured first and second data events, each of the captured first and second data events having an associated clock timestamp;

sorting at least some of the first and second captured data events according to the

respective clock timestamps associated with each of the first and second captured data events; and

¹ Because *Blackwell* is only citable under 35 U.S.C. § 102(e), Applicants do not admit that *Blackwell* is in fact prior art to the claimed invention but reserve the right to swear behind *Blackwell* if necessary to remove it as a reference.

displaying at least some of the sorted data events by way of a graphical user interface. (Emphasis added)

Similar amendments have been made to independent claims 9, 15, and 21. Support for such amendments is found at least in Figures 4, 5, and 7 and paragraphs [0035] and [0041] – [0059] of the originally filed specification.

In sharp contrast, the Office Action has not shown that *Blackwell*, or any other reference, either singularly or in combination, teaches the elements of independent claims 1, 9, 15, and 21. For example, the cited portions of *Blackwell* do not teach or suggest that analyzer 10 is an in-line device. Further, *Blackwell* does not teach or suggest that a first link analyzer captures first data events at a first communication protocol and that a second link analyzer captures second data events at a second communication protocol that is different from the first communication protocol. In other words, *Blackwell* does not teach or suggest that analyzer #1 and analyzer #2 of analyzer system 10 shown in Figure 1 of *Blackwell*, which are the only elements that reasonably may correspond to the link analyzers recited in independent claims 1, 9, 15, and 21, meet the requirements of these amended independent claims.

Accordingly, Applicants respectfully submit that the Office Action has not established that independent claims 1, 9, 15, and 21 as amended are anticipated by *Blackwell*, at least because the Office Action has not established that *Blackwell* teaches each and every element of independent claims 1, 9, 15, and 21 as amended, because the identical invention is not shown in *Blackwell* in as complete detail as is contained in independent claims 1, 9, 15, and 21 as amended, and because the Office Action has not shown that *Blackwell* discloses the elements of independent claims 1, 9, 15, and 21 as amended arranged as required by these claims. For at least the foregoing reasons, Applicants respectfully submit that the rejection of independent claims 1, 9, 15, and 21 as amended should be withdrawn. For the same reasons, the rejection of dependent claims 2, 4, 8, 11, 14, 17, 20, 23 and 26 should be withdrawn.

VIII. Rejection Under 35 U.S.C. § 103

The Office Action rejects claims 3, 10, 16, and 22 under 35 U.S.C. § 103 as being unpatentable over *Blackwell et al.* in view of *Chen et al.* (U.S. Publication No. 2007/0226547). The Office Action rejects claims 6-7, 12-13, 18-19 and 24-25 under 35 U.S.C. § 103 as being unpatentable over *Blackwell et al.* in view of *Grace* (U.S. Patent No. 5,748,098).

According to the applicable statute, a claimed invention is unpatentable for obviousness if the differences between it and the prior art "are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art." 35 U.S.C. § 103(a) (2005); *Graham v. John Deere Co.*, 383 U.S. 1, 14 (1966); MPEP 2142. Obviousness is a legal question based on underlying factual determinations including: (1) the scope and content of the prior art, including what that prior art teaches explicitly and inherently; (2) the level of ordinary skill in the prior art; (3) the differences between the claimed invention and the prior art; and (4) objective evidence of nonobviousness. *Graham*, 383 U.S. at 17-18; *In re Dembiczak*, 175 F.3d 994, 998 (Fed. Cir. 1999).

"The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious." MPEP 2142 (2007). Analysis supporting a rejection under 35 U.S.C. §103(a) should be made explicit. *KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, (2007). Moreover, the Patent Office must identify a reason (such as motivation) why a person of ordinary skill in the art at the time of the invention would have combined the prior art elements in the manner claimed. *Id.* "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Id.* quoting *In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006); *see also* MPEP 2142. A court should be wary of reasoning based on hindsight. *See Graham*, 383 U.S. at 36.

It is the initial burden of the PTO to demonstrate a *prima facie* case of obviousness. If the PTO does not set forth a *prima facie* case of obviousness, the Applicants are under no obligation to submit evidence of nonobviousness. MPEP 2142 (emphasis added).

Claims 3, 6, and 7 depend from amended independent claim 1. Claims 10, 12, and 13 depend from amended independent claim 9. Claims 16, 18, and 19 depend from amended independent claim 15. Claims 22, 24, and 25 depend from amended independent claim 21. If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is

nonobvious. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Therefore, the Applicants respectfully request that the rejections of claims 3, 6-7, 10, 12-13, 16, 18-19, 22, and 24-25 be withdrawn for at least the same reasons as discussed above for independent claims 1, 9, 15, and 21.

CONCLUSION

In view of the foregoing, Applicants believe the claims as presently pending are in allowable form and that every issue raised by the Office Action has been addressed. In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, or which may be overcome by an Examiner's Amendment, the Examiner is requested to contact the undersigned attorneys

The Commissioner is hereby authorized to charge payment of any of the following fees that may be applicable to this communication, or credit any overpayment, to Deposit Account No. 23-3178: (1) any filing fees required under 37 CFR § 1.16; and/or (2) any patent application and reexamination processing fees under 37 CFR § 1.17.

Dated this 11th day of September, 2008.

Respectfully submitted,

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